

NOV 6, 2007 RECEIVED

M/D I

2007 DEC 17 A 9:56

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

MARCUS TATE #180664
Full name and prison name of
Plaintiff(s)

v.

MARC S. BASS et al
11 South Union Street
Montgomery, Ala 36130

Name of person(s) who violated your
constitutional rights. (List the names
of all the person.)

please Assign TO
Charles Coady only

CIVIL ACTION NO. 2:07CV1093-mht
(To be supplied by Clerk of U.S. District
Court)

BENCH TRIAL
BY Charles Coady
ONLY REQUESTED!

I. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? YES ☒ No ☐
- B. Have you begun other lawsuits in state or federal court relating to your imprisonment? YES ☒ NO ☐
- C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiff(s) MARCUS TATE #180664

Defendant(s) MARC S. BASS et al

2. Court (if federal court, name the district; if state court, name the county)

U.S. Middle District Court

A-F
Exhibits
ATTACHED

ORAL HEARING
REQUESTED
A.S.A.P.

COURT DOCKET
APPEARANCE

3. Docket number CV-07-292-WKW

4. Name of judge to whom case was assigned Charles Coody

5. Disposition (for example: was the case dismissed? Was it appealed? Is it still pending?) Transferred

6. Approximate date of filing lawsuit N/A

7. Approximate date of disposition N/A

II. PLACE OF PRESENT CONFINEMENT Mobile Community Based Facility
2423 N. BELT LINE HWY Mobile, Ala 36663

PLACE OR INSTITUTION WHERE INCIDENT OCCURRED MARC S. BASS et al
OFFICE 11 South Union STREET Montgomery, Ala 36130

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR CONSTITUTIONAL RIGHTS.

	NAME	ADDRESS
1.	<u>MARC S. BASS et al</u>	<u>11 South Union STREET M, Ala 36130</u>
2.		
3.		
4.		
5.		
6.		

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED Nov 6, 2007
and etc

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:

GROUND ONE: Life Without Parole Imprisonment
Imposed by Marc S. Bass et al Nov 6, 2007
and etc ILLEGAL BY Defendants
And DEATH Threats
From Marc S. Bass et al

STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place and manner and person involved.)

SEE Exhibits A-F ATTACHED The Incident happen NOV 6, 2007 @ MARC S. BASS et, al OFFICE as Brief ATTACHED cited by Marc S. BASS et, al with Defendants Lied to Criminal Court Appeals TO make An unJustice DECision Against Plaintiff

GROUND TWO: The Defendant Indirectly & DIRECTly and Malice and Malicious violated

Plaintiff Civil Right CONSTITUTIONAL

SUPPORTING FACTS: 4th, 5th, 6th, 8th, 14th Amendment and DUE PROCESS of Law SEE Brief ATTACHED PAGE # 4-5

GROUND THREE: Plaintiff FEAR For his Life IN GREAT DANGER by Defendants MARC S. BASS et, al

SUPPORTING FACTS: MARC S. BASS et, al IS Forwarding Death Threats to plaintiff and TO Courthouse to IMPOSE Life without Parole Imprisonment UPON Plaintiff ILLEGAL SEE exhibit "F" page # 5

plaintiff REQUEST Federal WARRANT For Arrest SERVED upon MARC S. BASS et, al

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU.
MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

Full PARDON All Civil Right RESTORED
NOW TODAY, ASAP Life, & Life without
PAROLE IMPRISONMENT ABOLISHED
NOW TODAY ASAP SET FREE FROM
ILLEGAL custody

Marquell D. Tate
Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/13/07
(Date)

Marquell D. Tate
Signature of plaintiff(s)

STATE OF ALABAMA

OFFICE OF

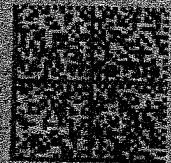
ATTORNEY GENERAL

11 SOUTH UNION STREET

MONTGOMERY, ALABAMA 36130-0152

ADDRESS SERVICE REQUESTED

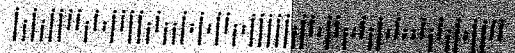
State Of Alabama
Central Mail Ops
#1



UNITED STATES POST
02 1M
00042258
MAILED FTM

MARCUS ORLANDA TATE
AIS #180664
3800 GK FOUNTAIN CORRECTIONAL FACILITY
ATMORE ALABAMA 36503

019



13 RIEF

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

(1).

MARCUS TATE
180664
Plaintiff

Vs.

MARC S. BASS et al
Defendants

2007 DEC 17 A 9:57

RECEIVED
DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALABAMA

**BENCH TRIAL
By charle coody
only!**

CV-2:07CV1093-MHT

**ORAL HEARING
REQUESTED ASAP**

13 RIEF

PURSUANT 1983 Complaint 42 USCS IN THE
MATTER OF "LIFE" AND DEATH TO A
INNOCENT MAN Plaintiff ABOVE

Plaintiff / Address

MARCUS TATE 180664

MOBILE Community Based Facility

2423 N. BELT LINE HWY

MOBILE, Alabama 36663

DEFENDANTS / ADDRESS

STATE OF ALABAMA ATTORNEY GENERAL OFFICE

MARC S. BASS et al

11 South Union STREET

Montgomery, Ala 36130

Exhibits

**FACTS FCRP 56(c) Exhibits ATTACHED
A-B-C-D-E-F**

(2).

ISSUES Plaintiff RAising

1. MARC S. BASS et al Imposed A ILLEGAL Life Without Parole Upon plaintiff
Nov 6, 2007 Without plaintiff
Violating NO LAWS of ALABAMA STATE
AT ALL SEE ATTACHED exhibit "F"
Page # 5

PERJURY OF DEFENDANTS

2. MARC S. BASS et al DENIED Plaintiff
Conviction of Life Imprisonment under
13A-5-9.1 RETROACTIVE 13A-5-9 HFOA
Application Committing PERJURY TO
ALABAMA CRIMINAL COURT Appealing
300 DEXTER AVENUE Montgomery Ala 36130
Lying That Plaintiff WAS A Violent
OFFENDER SEE exhibit "B" ATTACHED
Plaintiff has NO Violent Crimes
and SEE Exhibits "F" page # 7
FALSELY IMPRISONMENT

3. Plaintiff is helded Flasey Imprisonment
under 13A-5-9 (c)(2) STATUTE code of
Alabama 1975 SEE Exhibits "B" &
"D" ATTACHED

(A). The plaintiff Dose not have But
ONE PRIOR Felony under 13A-5-9(c)(2)
13A-5-9 HFOA SEE exhibits "B" & "D"

(3).

42. USCS Complaint ISSUE

(4.) Wherefore... plaintiff have Filed
Three or more 1983 Complaints
Concerning these ISSUE's

LIFE THREATEN

A. The LAWS of the UNITED STATES
STATED THAT A plaintiff CAN
not Filed Three or more Complaints
UNLESS the ISSUE's at hand
IS LIFE Threaten

B. The ISSUE IS LIFE Threaten
BECAUSE the defendants Marc S. Bass et al
Imposed Life Without PAROLE
upon plaintiff ILLEGAL Without
plaintiff committing NO Crime
or Breaking NO Law NOV. 6, 2007

C. There NO RECORDS to show plaintiff
violated the Law NOV 6, 2007
SEE exhibit "F" PAGE # 5
and SEE exhibit "B"

ILLEGAL Custody of Plaintiff

5. Plaintiff Shows A GENUINE ISSUE's That
he's in ILLEGAL Custody by Marc S. Bass et al
By Presenting Exhibits "D" "B" ATTACHED
under 13A-5-9(c)(2) SEE PRIORS Felony Convictions

(4)

ISSUES OF U.S. CONSTITUTION VIOLATIONS AMENDMENTS

(6.) MARC S. BASS et, al has VIOLATED
Plaintiff U.S. CIVIL RIGHTS
CONSTITUTIONAL AMENDMENTS
Following

4th AMEND: FALSE IMPRISONMENT
UNDER 13A-5-9(c)(2) Title Code
OF ALABAMA 1975

(7.) 5th AMEND: Double Jeopardy, DUE
PROCESS OF LAW, DEPRIVED OUTTA
Life, and Liberty CLAUSES

(8.) Right to A Fair TRIAL
under THE SIXTH AMEND:
By LYING COMMITTING PERJURY
TO ALABAMA CRIMINAL COURT
APPEALS, MONTGOMERY, ALA

(9.) 8th AMEND: Plaintiff has been
Inflicted with CRUEL UNUSUAL
PUNISHMENT BY DEFENDANTS
MARC S. BASS et, al DE TOO

(A.) FALSE IMPRISONMENT, (B.) Imposed
Life without Parole upon
Plaintiff ILLEGALLY NOV. 6, 2007

(5). (C). Lying and giving the Criminal Court Appeals FALSE Information TO LEAD TO A UNJUSTICE DECISION OF DENIAL TO Plaintiff RELIEF FROM Life, and Life without PAROLE IMPRISONMENT SEE Exhibits "F" page #5 & page #7

(10). Plaintiff Did not RECIEVE THE Full BENifit UNDER THE U.S. CONSTUTION 14th AMENDMENT Following

(A.) A Right too ENJOY THE Clause of Equal protection OF U.S. LAW

(B). The Right. to Full Immunity UNDER THE U.S. 14th AMEND CONSTITUTIONAL LAW

(C). THE Right to DUE PROCESS Clause UNDER THE U.S. 14th & 5th AMENDS CONSTITUTIONAL OF LAWS

(6). Plaintiff Relief Sought
REQUESTED FROM Defendants

1. TO BE Released From PAIN & Suffering Defendants MARC S. BASS et al Imposed NOV 6, 2007 etc,
2. TO ABOLISH Conviction OF Life Imprisonment and Life without PAROLE DO TO FALSE Imprisonment UNDER 13A-5-9(c)(2) Code of Ala 1975
3. TO Impose Full Pardon upon Plaintiff and ALL Civil Right RESTORED NOW TODAY ASAP
4. TO BE Released From ADOC CUSTODY TO A LOVING Mother THAT BEEN MISSING her SON FOR YEARS
5. TO BE Giving DAMAGE Relief FOR YEARS OF PAIN & Sufferings

(7).

CERTIFICATION OF SERVICE

I SWEAR I HAVE SERVED
THE UNITED STATES CLERK
OF COURT MIDDLE DISTRICT
STATE OF ALABAMA
DAY 13 MONTH 12th, 2007

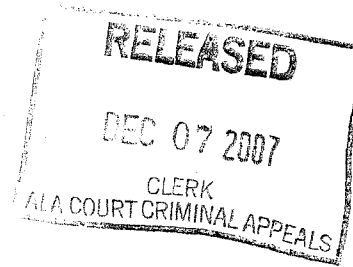
Sincerely

Marcus D. Tate
MARCUS TATE 180664
2423 N. BELT LINE HWY
MOBILE, AL 36663

Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala.R.App.P. Rule 54(d), states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

Court of Criminal Appeals

State of Alabama
Judicial Building, 300 Dexter Avenue
P. O. Box 301555
Montgomery, AL 36130-1555



PAMELA W. BASCHAB
Presiding Judge
H.W. "BUCKY" McMILLAN
GREG SHAW
A. KELLI WISE
SAMUEL HENRY WELCH
Judges

Exhibit
"A"

Lane W. Mann
Clerk
Gerri Robinson
Assistant Clerk
(334) 229-0751
Fax (334) 229-0521

MEMORANDUM

CR-06-1751

Clarke Circuit Court CC-99-169

Marcus Orlanda Tate v. State of Alabama

Baschab, Presiding Judge.

On November 2, 1999, the appellant was convicted of second-degree burglary. On December 21, 1999, the trial court sentenced him, as a habitual offender, to serve a term of life in prison. See §13A-5-9, Ala. Code 1975. On May 3, 2007, the appellant filed a motion for reconsideration of his sentence. Without requiring a response, the circuit court summarily denied the motion. This appeal followed.

The appellant argues that the circuit court erroneously denied his motion for reconsideration. In Kirby v. State, 899 So. 2d 968, 969-74 (Ala. 2004), the Alabama Supreme Court explained:

"In 2001, the Legislature passed Act No. 2001-977 ('the Act') in an attempt to make the 2000 amendments to §13A-5-9 retroactive. The stated purpose of the Act was 'to provide further for eligibility for parole consideration of non-violent offenders.' The Act, now codified as §13A-5-9.1, states in its entirety:

"The provisions of Section 13A-5-9 shall be applied retroactively by the sentencing judge or presiding judge for consideration of early parole of each nonviolent convicted offender based on evaluations performed by the Department of Corrections and approved by the Board of Pardons and Paroles and submitted to the court.'

"....

"... Reading §13A-5-9.1 in conjunction with §13A-5-9, it is clear that a sentencing judge or a presiding judge can resentence only two narrowly defined classes of habitual offenders: those who had been sentenced to life imprisonment without the possibility of parole under the mandatory provisions of the HFOA upon conviction of a Class A felony with no prior Class A felony convictions; and those who had been sentenced to life imprisonment under the mandatory provisions of the HFOA upon conviction of a Class B felony. Moreover, of those habitual offenders, the judge can resentence only those who are nonviolent offenders."

(Emphasis added.)

"There are three requirements for eligibility to have a sentence reconsidered under §13A-5-9.1: (1) the inmate was sentenced before May 25, 2000, the date the 2000 amendment to the HFOA became effective; (2) the inmate was sentenced to life imprisonment without the possibility of parole pursuant to §13A-5-9(c) (3) and had no prior Class A felony convictions or was sentenced to life

imprisonment pursuant to §13A-5-9(c)(2), see Prestwood, supra; and (3) the inmate is a 'nonviolent convicted offender.' An inmate must satisfy all three requirements before he or she is eligible for reconsideration of sentence under §13A-5-9.1."

Holt v. State, 960 So. 2d 726, 734-35 (Ala. Crim. App. 2006).

Section 13A-5-9.1, Ala. Code 1975, does not specifically define which offenders will be considered nonviolent. Therefore, we look to caselaw and statutes for guidance.

"Prior to January 1, 1980 robbery was a common law offense. At common law, robbery was '... the felonious taking of goods or money from the person of another, or in his presence, against his will by violence or by putting him in fear, and such violence must precede or accompany the stealing. Tunstil v. State, 33 Ala. App. 460, 34 So. 2d 857; Hardis v. State, 28 Ala. App. 524, 189 So. 216.' Hatchet v. State, 335 So. 2d 415, 418 (Ala. Crim. App. 1976). (Emphasis added). Our present Criminal Code '... significantly broadened the scope of common law robbery by adding new methods of committing that crime.' Beverly v. State, 439 So. 2d 758, 762 (Ala. Crim. App.), cert. denied, 439 So. 2d 758 (Ala. 1983).

"Now, the violence used or threatened does not have to precede or accompany the theft but it 'must be for the purpose of accomplishing [the] theft.' Commentary, §13A-8-40 through 44, Code of Alabama 1975."

Carlisle v. State, 484 So. 2d 540, 542 (Ala. Crim. App. 1985). Also, §13A-11-70, Ala. Code 1975, provides, in pertinent part:

"For the purposes of this division ['The Uniform Firearms Act'], the following terms shall have the respective meanings ascribed by this section:

"....

"(2) Crime of violence. Any of the following crimes or an attempt to commit any of them, namely, murder, manslaughter, (except manslaughter arising out of the operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping and larceny."

(Emphasis added.)

"[T]he fact that a crime is defined as a 'violent offense' under §13A-11-70 and/or §12-25-32, although certainly a relevant and appropriate consideration, is not binding on a circuit court in determining whether an inmate is a 'nonviolent convicted offender' within the meaning of §13A-5-9.1.

"...

"Of course, the statutory designation of an inmate's underlying offense as a 'violent offense' is certainly an important consideration in determining whether an inmate is a 'nonviolent convicted offender'; nothing in §13A-5-9.1 or Kirby suggests otherwise. However, the statutory designation of an offense is not the only factor a circuit court may consider, and the fact that the inmate's underlying conviction was for an offense statutorily defined as a 'violent offense' does not preclude a circuit court from considering other factors presented to it, such as the facts and circumstances surrounding the underlying offense, the facts and circumstances surrounding the inmate's prior convictions, the inmate's prison record, and any 'other factors brought before the judge in the record of the case.' Kirby, 899 So. 2d at 974. In determining whether an inmate is a 'nonviolent convicted offender' within the meaning of §13A-5-9.1, a circuit court is not precluded from considering, nor may it refuse to consider, all of the factors presented to it by either party. As Holt argued to the circuit court, and argues to this

Court, and as the Alabama Supreme Court made clear in Kirby, whether an inmate is a 'nonviolent convicted offender' is based on the totality of the circumstances.

"By totality of the circumstances, we mean the totality of the information before the circuit court when it rules on the §13A-5-9.1 motion. A circuit court is not required to solicit additional information before ruling on such a motion. To the contrary, a circuit court may summarily deny a §13A-5-9.1 motion without holding an evidentiary hearing or otherwise requiring the submission of additional evidence not before it as part of the pleadings, if it so chooses. Nothing in §13A-5-9.1 or Kirby requires otherwise. In addition, in determining whether an inmate is a 'nonviolent convicted offender' within the meaning of §13A-5-9.1, what weight to afford each factor presented to it is within the circuit court's discretion. A circuit court is not required to make specific findings of fact regarding the weight it affords each factor, and in reviewing a circuit court's determination of whether an inmate is a 'nonviolent convicted offender,' this Court will give the circuit court great deference regarding the weight it afforded the factors presented to it, and we will presume that the circuit court properly considered and weighed each factor presented, unless the record affirmatively shows otherwise. See, e.g., Prestwood, ___ So. 2d at ___ (recognizing the limited appellate review of a motion filed under §13A-5-9.1)."

Holt v. State, 960 So. 2d at 736-38.

Initially, we note that the appellant did not allege each and every conviction that was used to enhance his sentence. Also, he did not allege that all of his prior convictions were for nonviolent offenses. Therefore, the appellant did not plead sufficient facts to show that he was eligible for reconsideration.

Moreover, the appellant presented the following factors

to the circuit court: that he was convicted of second-degree burglary; that he was sentenced to life in prison on November 2, 1999; and that he has a prior conviction for "13A-7-6 2nd degree" and "burglary tools 3rd." (C.R. 78.) Based on the nature of the underlying burglary conviction, the circuit court could have reasonably concluded that the appellant was a violent offender and thus was not eligible for reconsideration of his sentence pursuant to §13A-5-9.1, Ala. Code 1975. See Kirby, 899 So. 2d at 974 (noting that "the state's trial judges have the authority under the statute to determine whether a defendant is a nonviolent offender and that those judges are competent to make that determination based upon the nature of the defendant's underlying conviction"). Also, the record does not affirmatively show that the circuit court did not properly consider and weigh each factor presented to it. Therefore, the circuit court properly denied the appellant's motion. Accordingly, we affirm the circuit court's judgment.

AFFIRMED.

McMillan, Shaw, Wise, and Welch, JJ., concur.

ALABAMA DEPARTMENT OF CORRECTIONS
INMATE SUMMARY AS OF 11/21/2007INST: 019
CODE: CDRVK

CBR7163

AIS: 00I80664A INMATE: TAITE, MARCUS RACE: B SEX: M
 INST: 019 MOBILE COMM WORK CENTER DORM: 00 JAIL CR: 000Y 01M 00D
 DOB: 06/07/1975 SSN: 424-96-3939
 ALIAS: MUHAMMAD, DRELIJAH J
 ALIAS: TAITCE, MARCUS
 ALIAS: TATE, MARCUS
 ADM DT: 11/23/1999 DEAD TIME: 000Y 07M 26D
 ADM TYP: NEW COMIT FROM CRT W/REV OF PR STAT: PAROLE REVOKED
 CURRENT CUST: MIN99 CURRENT CUST DT: 08/07/2007 PAROLE REVIEW DATE: MAR 2009
 SECURITY LEVEL: (2) TWO

ALIAS: TAIT, MARCUS O
 ALIAS: TAITE, MARCUS OLANDA
 ALIAS: TATE, MARCUS O

SERVING UNDER ACT446 LAW IN CLASS IV CURRENT CLASS DATE: 11/18/2001
 INMATE IS EARNING : PROHIBITED FROM EARNING GOODTIME
 COUNTY SENT DT CASE NO CRIME JL CR TERM
 CLARKE 11/23/99 N97000427 POSS OF BURGLAR'S TOOLS # 0030D 006Y 00M 00D CS
 ATTORNEY FEES : \$000100 HABITUAL OFFENDER : Y
 COURT COSTS : \$0000189 FINES : \$0000000 RESTITUTION : \$0000152
 CLARKE 11/02/99 N99000169 BURGLARY II 0000D LIFE CS
 COURT COSTS : \$0000239 FINES : \$0000000 RESTITUTION : \$0000500

TOTAL TERM
 LIFE

MIN REL DT
 00/00/0000

GOOD TIME BAL

GOOD TIME REV

LONG DATE
 99/99/9999

INMATE LITERAL: DC06-209,210,211, & 212 NOLLE PROSSED 5-12-2006

DETAINDER WARRANTS SUMMARY

INMATE CURRENTLY HAS NO DETAINDER WARRANT RECORDS

ESCAPEE/PAROLE SUMMARY

PAROLED FRM 050:04/05/04 RVK:04/10/06 DELQ:06/13/05 RECAP:02/09/06 RTN:02/09/06

INMATE CURRENTLY HAS NO PROBATION 754 RECORDS

INMATE HAS NO ESCAPES FROM ALABAMA D.O.C.
 SINCE O.B.S.C.I.S. RECORDING BEGAN IN 1978

DISCIPLINARY/CITATION SUMMARY

CONTINUED ON NEXT PAGE

Exhibit "B"

**COURT OF CRIMINAL APPEALS
STATE OF ALABAMA**

Lane W. Mann
Clerk
Gerri Robinson
Assistant Clerk



P. O. Box 301555
Montgomery, AL 36130-1555
(334) 229-0751
Fax (334) 229-0521

November 6, 2007

CR-06-1751

Marcus Orlanda Tate v. State of Alabama (Appeal from Clarke Circuit Court: CC99-169)

Notice of Filing of Brief

You are hereby notified that the following action was taken in the above cause:

Appellee's Brief Filed.

Lane W. Mann, Clerk
Court of Criminal Appeals

cc: Marcus Orlanda Tate, Pro Se
Hon. Marc S. Bass, Asst. Attorney General

Exhibit
"C"

**COURT OF CRIMINAL APPEALS
STATE OF ALABAMA**

Lane W. Mann
Clerk
Gerri Robinson
Assistant Clerk



P. O. Box 301555
Montgomery, AL 36130-1555
(334) 229-0751
Fax (334) 229-0521

November 2, 2007

CR-06-1751

Marcus Orlanda Tate v. State of Alabama (Appeal from Clarke Circuit Court: CC99-169)

Notice of Extension or Enlargement of Briefing Time

You are hereby notified that the following action was taken in the above cause:

Additional time is granted to file the appellee's brief to and including November 9, 2007.

**Lane W. Mann, Clerk
Court of Criminal Appeals**

cc: Marcus Orlanda Tate, Pro Se
Hon. Marc S. Bass, Asst. Attorney General

For a Class A misdemeanor, not more than one year.

For a Class B misdemeanor, not more than six months.

For a Class C misdemeanor, not more than three months.

Sentences for violations shall be for a definite term of imprisonment in county jail, not to exceed 30 days. (Acts 1977, No. 607, p. 812, Acts 1978, No. 770, p. 1110.)

-8. Place of imprisonment.

Place of imprisonment for sentences imposed in this state shall be as provided elsewhere by law. (Acts 1977, No. 607, p. 812, § 1232.)

-9. Habitual felony offenders — Additional penalties.

In all cases when it is shown that a criminal defendant has been previously convicted of a felony and after the conviction has committed another felony, he or she must be punished as follows:

On conviction of a Class C felony, he or she must be punished for a Class B felony.

On conviction of a Class B felony, he or she must be punished for a Class A felony.

On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

In all cases when it is shown that a criminal defendant has been previously convicted of any two felonies and after such convictions has committed another felony, he or she must be punished as follows:

On conviction of a Class C felony, he or she must be punished for a Class A felony.

On conviction of a Class B felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not less than 99 years.

In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies and after such convictions has committed another felony, he or she must be punished as follows:

13A-5-9
(C)(2)

(1) On conviction of a Class C felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

(2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or any term of not less than 20 years.

(3) On conviction of a Class A felony, where the defendant has no prior convictions for any Class A felony, he or she must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court.

(4) On conviction of a Class A felony, where the defendant has one or more prior convictions for any Class A felony, he or she must be punished by imprisonment for life without the possibility of parole. (Acts 1977, No. 607, p. 812, § 1235; Acts 1979, No. 79-664, p. 1163, § 1; Act 2000-759, p. 1736, § 1.)

§ 13A-5-9.1. Retroactive application of Section 13A-5-9.

The provisions of Section 13A-5-9 shall be applied retroactively by the sentencing judge or presiding judge for consideration of early parole of each nonviolent convicted offender based on evaluations performed by the Department of Corrections and approved by the Board of Pardons and Paroles and submitted to the court. (Act 2001-977, 3rd Sp. Sess., p. 941, § 1.)

§ 13A-5-10. Habitual felony offenders — Proof; restriction on imposition of penalty.

(a) The court may conduct a hearing upon the issue of whether a defendant is a repeat or habitual offender under Section 13A-5-9, according to procedures established by rule of court.

(b) Section 13A-5-9 does not apply to a corporation. (Acts 1977, No. 607, p. 812, § 1237.)

§ 13A-5-10.1. Habitual felony offenders — Proof; certified copies of case action summary sheets, docket sheets, etc.

(a) Certified copies of case action summary sheets, docket sheets or other records of the court are admissible for the purpose of proving prior convictions of a crime, if the prior conviction is otherwise admissible under the laws of this state.

(b) If the trial court determines that the defendant would be prejudiced by the admission of the documents described in subsection (a) the court

Exhibit³⁰ "D"

Exhibit³¹ "D"

Bobby White v. State of Alabama
COURT OF CRIMINAL APPEALS OF ALABAMA
2006 Ala. Crim. App. LEXIS 113
CR-05-0228
June 30, 2006, Released

Notice:

THIS OPINION IS SUBJECT TO CORRECTION OR REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTER.

Editorial Information: Prior History

Appeal from Elmore Circuit Court. (CC-99-116). John B. Bush.

Disposition

REVERSED AND REMANDED.

Counsel

For Appellant: **Bobby White**, pro se.

For Appellee: Troy King, atty. gen., and Stephen N. Dodd, asst.

atty. gen.

Judges: SHAW, Judge. McMillan, P.J., and Cobb, Baschab, and Wise, JJ., concur.

Exhibit
"E"

Notice:

THIS OPINION IS SUBJECT TO CORRECTION OR REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTER.

Editorial Information: Prior History

Appeal from Elmore Circuit Court. (CC-99-116). John B. Bush.

Disposition REVERSED AND REMANDED.

Counsel For Appellant: Bobby White, pro se.

For Appellee: Troy King, atty. gen., and Stephen N. Dodd, asst. atty. gen.

Judges: SHAW, Judge. McMillan, P.J., and Cobb, Baschab, and Wise, JJ., concur.

Opinion

Opinion by: SHAW

SHAW, Judge.

Bobby White appeals the circuit court's summary denial of his motion made pursuant to § 13A-5-9.1, Ala. Code 1975, to reconsider his two sentences of life imprisonment imposed upon application of the Habitual Felony Offender Act ("the HFOA") for his convictions for first-degree escape and first-degree theft. See *Kirby v. State*, 899 So. 2d 968 (Ala. 2004).

White filed his motion on July 7, 2005, alleging that he was entitled to have his sentences reconsidered because, he said, he was convicted and sentenced before May 25, 2000, the effective date of the 2000 amendment to the HFOA, neither his present convictions nor his prior convictions involved violent conduct, and his prison record reflects his good behavior while in prison. After ordering and receiving information from the Department of Corrections regarding White's prison record, the circuit court summarily denied White's motion, stating:

"After reviewing the records supplied by the Department of Corrections, the Court has determined that the Defendant was paroled on this case on March 29, 2004. His parole was revoked on February 14, 2005, and he was sent back to continue serving his sentence.

"Section 13A-5-9.1, Code of Alabama, 1975, as amended, states in part '... for consideration of early parole . . . ' This Court finds that the Defendant has already received the benefit of early parole and is therefore not eligible for relief. Accordingly, his Motion to Reconsider Sentence is DENIED."

(C. 75.)¹

On appeal, White contends, and the State concedes, that the circuit court erred in finding that White was ineligible for sentence reconsideration solely because he had previously been granted parole and that parole had been revoked. As this Court explained in *Holt v. State*, [Ms. CR-04-1250, March 3, 2006] So. 2d, 2006 Ala. Crim. App. LEXIS 39 (Ala. Crim. App. 2006), there are only three eligibility requirements for sentence reconsideration under § 13A-5-9.1:

"There are three requirements for eligibility to have a sentence reconsidered under § 13A-5-9.1:

(1) the inmate was sentenced before May 25, 2000, the date the 2000 amendment to the HFOA became effective; (2) the inmate was sentenced to life imprisonment without the possibility of parole pursuant to § 13A-5-9(c)(3) and had no prior Class A felony convictions or was sentenced to life imprisonment pursuant to § 13A-5-9(c)(2). See *Prestwood v. State*, 915 So. 2d 580 (Ala. Crim. App. 2005); and (3) the inmate is a 'nonviolent convicted offender.' An inmate must satisfy all three requirements before he or she is eligible for reconsideration of sentence under § 13A-5-9.1

So. 2d at . That an inmate has not previously been paroled is not a requirement for eligibility for sentence reconsideration under § 13A-5-9.1, although an inmate's parole history is a factor to be considered in determining whether an inmate is a nonviolent offender and whether to resentence an eligible inmate. See *Ferrell v. State*, [Ms. CR-05-0831, May 26, 2006] So. 2d (Ala. Crim. App. 2006), 2006 Ala. Crim. App. LEXIS 86. Therefore, the circuit court erred in finding that White was not eligible for sentence reconsideration solely because he had previously been paroled and that parole had been revoked.

Based on the foregoing, the judgment of the circuit court is reversed and this cause remanded for the circuit court to reconsider White's § 13A-5-9.1 motion in light of this Court's opinion in *Holt*.

REVERSED AND REMANDED.

McMillan, P.J., and Cobb, Baschab, and Wise, JJ., concur.

Footnotes

Footnotes

1 The circuit court had jurisdiction to consider the motion because the judge who ruled on the motion is the judge who sentenced White. See, e.g., *Holt v. State*, [Ms. CR-04-1250, March 3,

2006] So. 2d, 2006 Ala. Crim. App. LEXIS 39 (Ala. Crim. App. 2006), and the cases cited therein.

2006 Ala. Crim. App. LEXIS 114: Heidelberg v. State, June 30, 2006, Released

NOV 6, 2007 CR-06-1751

In the COURT of CRIMINAL APPEALS
OF ALABAMA

MARCUS ORLANDA TATE,

Appellant,

v.

STATE OF ALABAMA,

Appellee.

On Appeal From the Circuit Court of
Clarke County, Alabama
(CC-99-0169)

BRIEF OF APPELLEE

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Assistant Attorney General

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November 6, 2007

Exhibit
"F"

STATEMENT REGARDING ORAL ARGUMENT

The State of Alabama does not request oral argument, because the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Ala. R. App. P. Rule 34 (a) (3).

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TABLE OF CASES AND AUTHORITIES

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<u>Butler v. State</u> , CR- 05-0189, 2006 WL 1793729 (Ala. Crim. App. Jun. 30, 2006) (reversed on other grounds), <u>Ex parte Butler</u> , 2007 WL 779148 (Ala. Mar. 16, 2007)	7
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STATEMENT OF THE CASE AND FACTS

Marcus Orlanda Tate appeals from the May 3, 2007, denial of his motion to amend sentence by the Clarke County Circuit Court, the Honorable James T. Baxter, presiding, attempting to reduce his sentence pursuant to Alabama Code (1975) Section 13A-5-9.1 and the Alabama Habitual Felony Offender Act (Alabama Code (1975) Section 13A-5-9). (C. 15-16)

Tate was convicted of second degree burglary on November 2, 1999. (C. 57) Tate was sentenced to life imprisonment under the Alabama Habitual Offender Act. (C. 57) This Court affirmed his conviction in an unpublished memorandum and issued a certificate of judgment on July 11, 2000. See Taite v. State, CR-99-0781, 810 So. 2d 813 (Ala. Crim. App. 2000).

Tate filed his first motion for reduction of sentence on February 1, 2007. (C. 79) Tate filed his second motion for reduction of sentence on April 30, 2007. (C. 78) Clarke Circuit Judge James Baxter summarily denied Tate's motions on May 3, 2007. (C. 78-79) This appeal followed.

STATEMENT OF THE ISSUE

Did the trial court abuse its discretion in denying Tate's motion to reconsider his life sentence filed pursuant to Alabama Code (1975) Section 13A-5-9.1?

STANDARD OF REVIEW

The trial court's decision on a motion to reconsider sentence under Section 13A-5-9.1 of the Code of Alabama is reviewed for abuse of discretion. See Prestwood v. State, 915 So. 2d 580, 582 (Ala. Crim. App. 2005).

SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion in denying Tate's motion to reconsider his sentence under Section 13A-5-9.1 of the Code of Alabama. The decision whether to grant Tate's motion and re-sentence him was completely within the discretion of the sentencing or presiding judge.

Tate has not shown that the trial court abused its discretion in denying his motion, such as the court having based its decision on an erroneous conclusion of law or having made its decision without there being any evidence in the record upon which it rationally could have based its decision; accordingly, the trial court's decision should stand.

ARGUMENT

In The Absence Of Evidence That The Trial Court Abused Its Discretion In Denying Tate's Motion To Reconsider His Sentence Under Alabama Code (1975) Section 13A-5-9.1, The Court's Decision Must Stand.

Tate contends that the trial court abused its discretion in summarily denying his motion to reconsider his sentence under Alabama Code Section 13A-5-9.1. Appellant's Brief 3. Tate argues that the trial court erred "in finding that [he] was not eligible for his

[November 2, 1999] sentencing of [life] of burglary 2nd degree to be reconsidered for sentencing of modification under HFOA Act 2000 Amendment [sic] 13A-5-9." Appellant's Brief 3. However, the trial court determined that Tate, due to the information the trial court considered, was not eligible for the relief provided under Alabama Code (1975) Section 13A-5-9.1.

At the time Tate's motion for reconsideration was decided, Alabama Code (1975) Section 13A-5-9.1 provided¹:

The provisions of Section 13A-5-9 shall be applied retroactively by the sentencing judge or presiding judge for consideration of early parole of each nonviolent convicted offender based on evaluations performed by the Department of Corrections and approved by the Board of Pardons and Paroles and submitted to the court.

As required by Section 13A-5-9.1, the trial court had jurisdiction to consider Tate's motion. The judge considering Tate's motion, though not the judge that presided over his trial and imposed his life without parole

¹ It is noted that, as of June 14, 2007, which was subsequent to the trial court's decision in the case at hand, Section 13A-5-9.1 was amended to provide that if the sentencing judge is no longer in office, a motion for reconsideration of sentence may be heard by any circuit judge appointed by the presiding judge, differing from the previous provision which limited the review to either the sentencing or presiding judge only. See Ala. Code Section 13A-5-9.1, amended by Act 2007-457, Approved June 14, 2007.

sentence, is the presiding judge of the circuit, as per the requirements in Alabama Code (1975) Section 13A-5-9.1. (C. 54)

This Court, in Prestwood v. State, 915 So. 2d 580, 582 (Ala. Crim. App. 2005), held the following:

[T]his court's review of such orders (denying a motion for reconsideration of sentence) will be limited. As long as the trial court has jurisdiction to rule on a § 13A-5-9.1 motion; reviews any such motion that is properly filed before it by an inmate who is eligible for reconsideration; and, if it chooses to resentence a petitioner, imposes a sentence that is authorized by §§ 13A-5-9(c)(2) or 13A-5-9(c)(3), Ala.Code 1975, we will not second-guess that court's discretionary decision.

Prestwood v. State, 915 So. 2d 580, 582 (Ala. Crim. App. 2005) (emphasis added). Consequently, if the trial court had jurisdiction to consider the motion to reconsider sentence filed under Alabama Code (1975) Section 13A-5-9.1, and reviewed the motion, this Court has indicated that it will not second-guess the court's decision on the motion.

In Holt v. State, 960 So. 2d 726 (Ala. Crim. App. 2006), this Court opined:

[T]here are three requirements for eligibility to have a sentence reconsidered under § 13A-5-9.1: (1) the inmate was sentenced before May 25, 2000, the date the 2000 amendment to the HFOA became effective; (2) the inmate ... was sentenced to life

imprisonment pursuant to § 13A-5-9(c)(2) ... and (3) the inmate is a "nonviolent convicted offender[]".

Holt v. State, CR 960 So. 2d 726 at 734-735.

Tate met the first two requirements for reconsideration of his sentence. Regardless, however, he was ineligible for resentencing because he did not meet the third requirement -- "nonviolent convicted offender". This Court has provided detailed instruction in its review of a trial court's determination of whether a defendant is a nonviolent offender in Butler v. State, CR- 05-0189, 2006 WL 1793729 (Ala. Crim. App. Jun. 30, 2006) (reversed on other grounds), Ex parte Butler, 2007 WL 779148 (Ala. Mar. 16, 2007). In Butler this Court held:

We conclude that the state's trial judges have the authority under the statute to determine whether a defendant is a nonviolent offender and that those judges are competent to make that determination based upon the nature of the defendant's underlying conviction, other factors brought before the judge in the record of the case, and information submitted to the judge by the DOC and the Parole Board concerning the inmate's behavior while incarcerated." [Kirby], 899 So. 2d 974...

While § 13A-5-9.1, Ala.Code 1975, does not specifically define which offenders are considered violent, we can look to caselaw and statutes for guidance in that area. Section 13A-11-70, Ala.Code 1975, provides, in pertinent part:

"For the purposes of this division ['Pistols'],

the following terms shall have the respective meanings ascribed by this section: ...

(2) Crime of violence. Any of the following crimes or an attempt to commit any of them, namely, murder, manslaughter[] (except manslaughter arising out of the operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping and larceny." (Emphasis added.)

[T]he fact that a crime is defined as a "violent offense" under § 13A-11- 70 and/or § 12-25-32, although certainly a relevant and appropriate consideration, is not binding on a circuit court in determining whether an inmate is a "nonviolent convicted offender" within the meaning of § 13A-5-9.1...

Of course, the statutory designation of an inmate's underlying offense as a "violent offense" is certainly an important consideration in determining whether an inmate is a "nonviolent convicted offender"; nothing in § 13A-5- 9.1 or Kirby suggests otherwise. However, the statutory designation of an offense is not the only factor a circuit court may consider, and the fact that the inmate's underlying conviction for an offense statutorily defined as a "violent offense" does not preclude a circuit court from considering other factors presented to it, such as the facts and circumstances surrounding the underlying offense, the facts and circumstances surrounding the inmate's prior convictions, the inmate's prison record, and any "other factors brought before the judge in the record of the case." Kirby, 899 So. 2d at 974...

[W]hether an inmate is a "nonviolent convicted offender" is based on the totality of the circumstances. By totality of the circumstances, we mean the totality of the information before the circuit court when it rules on the § 13A-5-9.1 motion...

In addition, in determining whether an inmate is a "nonviolent convicted offender" within the meaning of § 13A-5-9.1, what weight to afford each factor presented to it is within the circuit court's discretion. A circuit court is not required to make specific findings of fact regarding the weight it affords each factor, and in reviewing a circuit court's determination of whether an inmate is a "nonviolent convicted offender," this Court will give the circuit court great deference regarding the weight it afforded the factors presented to it, and we will presume that the circuit court properly considered and weighed each factor presented, unless the record affirmatively shows otherwise. See, e.g., Prestwood [v. State, 915 So. 2d 580, 583 (Ala. Crim. App. 2005)] (recognizing the limited appellate review of a motion filed under § 13A-5-9.1)." Holt v. State, [Ms. CR-04-1250, March 3, 2006] --- So.2d ----, -- -- (Ala. Crim. App. 2006).

Butler v. State, 2006 WL 1793729 at *2-3 (emphasis added).

This Court, in Butler, stated that, "in determining whether an inmate is a 'nonviolent convicted offender'... what weight to afford each factor presented to it is within the circuit court's discretion." Id. This Court will also give "great deference regarding the weight it afforded the factors presented to it, and we will presume that the circuit court properly considered and weighed each factor presented, unless the record affirmatively shows otherwise." Id.

Tate cites that he was eligible for reconsideration of sentence and that the trial court had the authority to

grant his Kirby motion. Appellant's Brief 4. But, irrespective of Tate's assertions, this Court has consistently held it will presume that the circuit court considered and weighed all the factors presented in the record. Prestwood v. State, 915 So. 2d 580, 583 (Ala. Crim. App. 2005). As such, and in light of the information in its record², the trial clearly had a sufficient basis on which to base its decision, and did not abuse its discretion in dismissing Tate's motion for reconsideration.

To the extent Tate infers otherwise, a trial court is not required to make a written finding of fact in its determination of specifically why Tate was not eligible to have his sentence reduced. This Court, again, in Butler, 2006 WL 1793729 at *3, stated, "a circuit court is not required to make specific findings of fact regarding the weight it affords each factor." Id. Therefore, Tate was not entitled to written findings of fact.

Finally, it is worth noting that, even if Tate had met all three eligibility requirements, he was not automatically entitled to be resentenced. More specifically, in Holt, this Court opined that "a circuit

² See Taite v. State, 810 So. 2d 813(Table) (Ala. Crim. App. 2000).

court is not required to resentence an inmate merely because it determines that the inmate is eligible for reconsideration of his or her sentence". See Id. at 10, fn. 3.

Accordingly, in the absence of evidence of abuse of discretion by the trial court in denying Tate's motion to reconsider his sentence, this Court "[should] not second-guess that court's discretionary decision". See Prestwood, 915 So. 2d at 582. Tate also has failed to meet his burden on appeal -- to show that the trial court abused its discretion in denying his motion for reconsideration.

CONCLUSION

Therefore, for the foregoing reasons, the trial court's judgment is due to be affirmed.

Respectfully submitted,

Troy King
Attorney General

Marc A. Starrett
Assistant Attorney General
By-

/s/Marc S. Bass
Marc S. Bass (BAS 020)
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 6th of November, 2007, I electronically filed the foregoing with the Court and served a copy on Appellant, by placing the same in the United States Mail, first class, postage prepaid and addressed as follows:

Marcus Orlanda Tate
AIS# 180664
3800 G. K. Fountain Correctional Facility
Atmore, Alabama 36503

/s/Marc S. Bass
Marc S. Bass
Assistant Attorney General

ADDRESS OF COUNSEL:
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340620/110877-001

RECEIVED

IN THE CRIMINAL APPEALS COURT
STATE OF ALABAMA

U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

MARCUS TATE
Appellant

EC-49-169-M

VS.

STATE OF ALABAMA,

Application For Rehearing
/OR/ Application For
Appeal TO ALABAMA
Supreme Court

Done under my hand Day
11 month 12, 2007

SINCERELY

MARCUS O. Tate

MARCUS TATE 180664

MCBF

2423 N. BELT LINE HWY

MOBILE, Ala 36663

Filed

(1).

RECEIVED
IN THE COURT OF CRIMINAL APPEALS
STATE OF ALABAMA

MARCUS TATE
Appellant

VS.

STATE OF ALABAMA
Appellee

CC-99-169-M

MOTION TO APPEAL TO ALABAMA
Supreme Court AS
Following REASONS BELOWS
SUPPORTED BY Exhibits
FACTS

1. The Appellant MEETS AND Satisfy all three requirements under Statute Code of Ala 13A-5-9.1 SEE Exhibit "A" Page #2
 - (A.) The Appellant Sentenced under 13A-5-9(c)(2) Class B Felony NOV 2, 1999
 - (B.) The Appellant sentenced before May 25, 2000 Amendment 13A-5-9.1 SEE Exhibit "A" ATTACHED
 - (C.) ALL OF APPELLANT PRIORS Convictions ARE NON-VIOLENT OFFENSE'S SEE Exhibit "B" ATTACHED ADOC Inmate Summary Time Sheet

Filed

(2). (D). The Appellant Sentenced to Life Imprisonment SEE Exhibit "B" ATTACHED

(E). The Appellee's ATTORNEY General OFFICE DID NOT FORWARD A Copy of Appellee's Brief to Appellant Nov 6, 2007 SEE ATTORNEY GENERAL MARC S. BASS, and Exhibit "C" ATTACHED

(F). The Appellant Was Convicted ILLEGAL and SENTENCED to FALSE Imprisonment under 13A-5-9(c)(2) in CASE NO. CC-99-169-M SEE Exhibits "D" AND Exhibit "B" ATTACHED

(1.) The Appellant only have ONE prior Felony under 13A-5-9(c)(2) STATUTE SEE Exhibit "B"

(a). Poss of BURGLAR'S TOOLS
CASE NO. N97000 427

(3). (G). The STATE OF ALABAMA Appellee's
AND ADOC HAVE ILLEGAL
Custody OVER Appellant In
CASE NO CC-99-169-M
UNDER STATUTE 13A-5-9 (c)(2)
SEE exhibits "B" "D" ATTACHED

(1.) The Appellant only have ONE
PRIOR Felony SEE exhibit "B"

(H). The Appellant REQUEST for a Good
Civil Lawyer from the STATE OF
Alabama ATTORNEY GENERAL OFFICE
TO REPRESENT to OVERTURN this
Life conviction and ABOLISH
it and give Appellant
A FULL PARDON and
COMPENSATE Appellant from
NOV 2, 1999 to 2007-2008

REASON: THIS FALSE IMPRISONMENT
CAN NOT BE COVERED
NO MORE

IT WILL BE DISCOVERED NOW
OR LATER IN CIVIL TRIAL
COURT

Filed

(4).

CERTIFICATION OF SERVICE Proof of Service

I, Appellant Sweet to Affirm
I have Served the STATE
OF ALABAMA CRIMINAL Appeals
Court This Motion For Appeal
TO Alabama Supreme Court
and ALL parties CONCURRED
Below by the U.S. VIA Mail
SERVICE HAND DELIVERED Affixed
by Prepaid Mailing Stamps
HAND DELIVERED DAY 11 Month
12, 2007

CC-

ATTORNEY GENERAL 11 South Union STREET M, Ala 36130
CRIMINAL Appeals Court 300 DEXTER AVE M, Ala
Clerk of Court JAY DUKE P.O. Box 912 G, Ala 36451

Filer

Sincerely
Marcus O. Tate
Marcus TATE #180664
Mobile Community BASED
2423 N. Belt Line Hwy
Mobile, Ala 36663